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In re Application of
Tom Blomme et al. : DECISION ON
Application No.: 09/701,349 :
PCT No.: PCT/DE99/00918 : PETITION
Int. Filing Date: 25 March 1999 :
Priority Date: 28 May 1998 : UNDER 37 CFR 1.47(a)
Attorney's Docket No.: KSN0007 :
For: RF CONNECTOR WITH CUTTING EDGES :

This is a decision in response to the declaration and petition filed under 37 CFR 1.47(a) on 11 June 2001, to accept the application without the signature of co-inventor Mr. Tom Blomme. The required \$130 petition fee has been received.

BACKGROUND

On 25 March 1999, applicants filed international application PCT/DE99/00918, which claimed priority of an earlier German application filed 28 May 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau 02 December 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 17 September 1999. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 November 2000.

On 28 November 2000, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, a translation of the international application into English, a copy of the Search Report, a copy of the International Preliminary Examination Report, a copy of the annexes translated into English, a preliminary amendment and the requisite basic national fee as required by 35 U.S.C. 371(c).

On 10 January 2001, the United States Designated/Elected Office mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form

PCT/EO/EO905), indicating that an oath or declaration and the surcharge for filing the oath or declaration later than 30 months from the priority date as required by 37 CFR 1.492(e) needed to be filed. The notification set a one-month time period in which to respond.

In response to the Form PCT/DO/EO/905, on 11 June 2001, applicant filed the following papers:

- 1) a transmittal letter;
- 2) a petition under 37 CFR 1.47 (a) and the required petition fee;
- 3) the required surcharge for filing the declaration later than 30 months from the earliest priority date;
- 4) declarations/powers of attorney signed by inventors Jan Dessein, Marcus Schulte, Martin Strab, Edgard Acke, Joris Dobelaere, and Bernard Houtemann;
- 5) an affidavit by Marion Heinz-Schafer concluding that Tom Blomme had not signed a declaration and giving Tom Blomme's last known address;
- 6) an affidavit by Eric J. Groen; and,
- 7) a petition and fee for a four-month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

With respect to item (1), the \$130 petition fee under 37 CFR 1.17(h) was included with the petition. The petition is missing item (2). With respect to item (3), Ms. Marion Heinz-Schafer has given a statement of Mr. Tom Blomme's last known address. The petition is missing item (4).

MPEP 409.03(d) states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

With respect to item (2) above, Marion Heinz-Schafer stated, "On about January 20, 2001, at my request and direction, my secretary Ms. Pia Mueller spoke with Mr. Tom Blomme who informed her that he had received the application papers, including the declaration, but that he refused to sign the declaration, and any further formal papers." This affidavit does not satisfy the requirements of MPEP 409.03(d) in that Ms. Pia Mueller is the person to whom the refusal was made, and she has not supplied an affidavit.

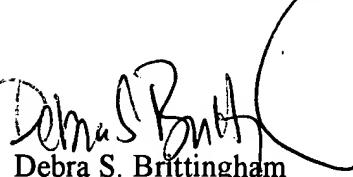
With respect to item (4) above, the declaration identifies each inventor and country of citizenship of each inventor. However, the declaration submitted contained four identical sheets of page 4 of 5. The first page 4 of 5 was signed by Marcus Schulte, the second page 4 of 5 was signed by Martin Straub, the third page 4 of 5 was signed by Edgard Acke and the fourth page 4 of 5 was signed by Joris Dobbelaere. The declaration is not properly executed. It appears that the attorney pieced together six separate complete declarations into one composite declaration or an inventor was presented with an incomplete declaration. What is required is one declaration where all inventors have signed or separate complete declarations. Thus, the requirements of 37 CFR 1.497 have not been met and the declaration is unacceptable.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C., 20231, with the contents of this letter marked to the attention of the PCT Legal Office.


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